

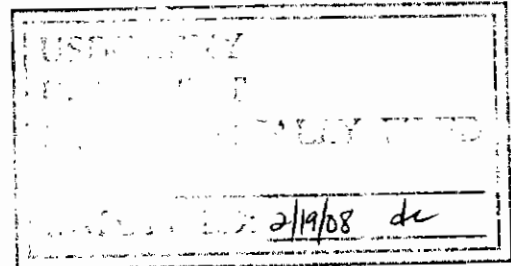
# BINGHAM

Diane C. Hertz  
Direct Phone: 212.705.7821  
Direct Fax: 212.702.3655  
diane.hertz@bingham.com

February 8, 2008

VIA FACSIMILE

Honorable Barbara S. Jones  
United States Courthouse  
500 Pearl Street -- Room 620  
New York, NY 10007



Re: L & L Wings, Inc. v. Marco-Destin Inc. et al.  
Case No. CV-07-4137 (BSJ) (GWG)

Dear Judge Jones:

We represent Plaintiff L&L Wings, Inc. in the above referenced matter, and write in response to the letter of Defendants' counsel, dated February 7, 2008, concerning Plaintiff's Supplemental Opposition to Defendants' Motion for Summary Judgment. Counsel's letter confirms that issues of fact exist in this case that preclude summary judgment on the grounds requested. As set forth in Plaintiff's Supplemental Opposition, Defendants seek to rely solely on a technical evidentiary matter in asking the Court to ignore evidence that patently shows that, at a minimum, serious issues of fact exist relating to each of the moving Defendant's infringing use of the trademark and trade dress at issue in this case. Such evidence directly calls into question the accuracy of representations made by Defendants in support of their motion.

Accordingly, in these circumstances, Plaintiff respectfully submits that its Supplemental Opposition should be properly considered by the Court, and requests that the Court accept this pleading so that a decision can be made on the merits of the issues. *See Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. BP Amoco P.L.C.*, No. 03 Civ. 0200 (GEL), 2003 WL 1618534, at \*1 (S.D.N.Y. Mar. 27, 2003) (permitting supplemental affidavit in absence of bad faith or prejudice, where plaintiffs "[did] not contend" that they "would or could offer any additional evidence to rebut" defendants' affidavit, as such evidence "further refined" the issues and allowed the court to make a determination "on the most

Boston  
Hartford  
Hong Kong  
London  
Los Angeles  
New York  
Orange County  
San Francisco  
Santa Monica  
Silicon Valley  
Tokyo  
Walnut Creek  
Washington

Bingham McCutchen LLP  
399 Park Avenue  
New York, NY 10022-4689

T 212.705.7000  
F 212.752.5378  
bingham.com

A/72423515.1

February 8, 2008  
Page 2

complete factual basis possible") (attached hereto for the Court's reference).

Very truly yours,

  
Diane C. Hertz

cc: Lansing Palmer, Esq. (counsel for defendants)  
Richard Taffet, Esq. (counsel for plaintiff)  
Bennett Krasner, Esq. (counsel for plaintiff)

The Court will accept Plaintiff's Supplemental Opposition in this matter. Defendant may submit a rebuttal within 30 days of this Order. No further submissions will be accepted.

SO ORDERED

Dated:

  
BARBARA S. JONES  
U.S.D.J.

2/19/08